

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.Nos.325, 326 & 327/VIZ/2018
(निर्धारणवर्ष / Assessment Years: 2007-08, 2008-09 & 2009-10)**

Asst. Commissioner of Income-Tax Central Circle – 1 Pratyakshakar Bhavan Sector-8, MVP Double Road Visakhapatnam, Andhra Pradesh	v.	Y. Joji Reddi Flat No. 401, Vasanth Vihar Sunder Nagar Colony S.R. Nagar, Hyderabad [PAN: AAOPY7015K]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपीलसं. / I.T.A. No. 328/VIZ/2018
(निर्धारणवर्ष/ Assessment Year: 2007-08)**

Asst. Commissioner of Income-Tax Central Circle – 1 Pratyakshakar Bhavan Sector-8, MVP Double Road Visakhapatnam, Andhra Pradesh	v.	Y. Lourdu Reddy 7-2-1793, Indigos County Flat No. 314, Czech Colony Sanath Nagar, Hyderabad [PAN: AAEPY9192K]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

सी.ओ. सं. / C.O. Nos. 59, 60 & 61/VIZ/2019
 [आयकअपीलसं. से उत्पन्न / ARISING OUT OF I.T.A. Nos. 325, 326 & 327/VIZ/2018
 (निर्धारणवर्ष/ Assessment Years: 2007-08, 2008-09 & 2009-10)]

Joji Reddy Yeruva C/o D.M. Rao & Co., Chartered Accountants, 305, GVK Plaza Seethammampeta, Visakhapatnam – 530016 Andhra Pradesh [PAN: AAOPY7015K]	v.	Asst. Commissioner of Income-Tax Central Circle – 1 Pratyakshakar Bhavan Sector-8, MVP Double Road Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Samuel Nagadesi, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	29.07.2024
घोषणा की तारीख/Date of Pronouncement	:	09.09.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. The above captioned appeals and cross objections are relating to assesseees of same group / family, therefore for the sake of convenience all these appeals are clubbed, heard together and disposed off by this consolidated order. Further, since the issues raised in all above appeals are different, therefore we proceed to dispose of each appeal separately.

ITA No. 325/VIZ/2018 (A.Y. 2007-08) (Revenue Appeal)

2. This appeal is filed by the Revenue against order of Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [hereinafter in short Ld.CIT(A)] in

ITA No.78/2015-16/CIT(A)-3/VSP/2017-18 dated 31.03.2018 for the A.Y.2007-08 arising out of the order passed under section 143(3) r.w.s.153C of Income Tax Act, 1961 (in short 'Act').

3. Brief facts of the case are that, assessee being an individual deriving income from civil construction works and from other sources, filed his return of income admitting an income of Rs. 9,35,880/- besides agricultural income of Rs.1,85,000/- for the A.Y. 2007-08. Consequent to the search and seizure operation under section 132 of the Act conducted in the case of M/s. Sai Lakshmi Township Pvt. Ltd., Visakhapatnam on 22.08.2008 certain incriminating material relating to the assessee were found and seized. Accordingly, notice under section 153C of the Act was issued to the assessee on 29.01.2010 and served on 09.02.2010 requiring the assessee to file the return of income for six (6) assessment years ranging from A.Y. 2003-04 to A.Y.2008-09. In response to the notice, assessee filed a copy of return of income for the A.Y.2007-08 on 22.09.2010 declaring the total income at Rs.9,35,880/- besides agricultural income of Rs. 1,85,000/-. Subsequently, notices under section 143(2) and 142(1) of the Act along with the questionnaire were issued on 23.09.2010 and served on 27.09.2010. In response to the notices, the Authorized Representative of the assessee appeared and filed the information called for. After examining and verification of the information furnished by the assessee's representative,

Ld. Assessing Officer completed the assessment by making an addition of Rs.2,38,43,000/- and Rs. 1,32,28,500/- as unexplained investments.

4. Being aggrieved by the order of the Ld. Assessing Officer, assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) after considering the submissions made by the assessee, partly allowed the appeal of the assessee.

5. Being aggrieved by the order of the Ld. CIT(A), Revenue is in appeal before us by raising following grounds of appeal: -

“(i) The CIT(Appeals) erred in concluding that the assessee discharged his onus and burden in explaining sources of Unsecured loans of Rs.72.02 lakhs.

“(ii) The CIT(A) erroneously placed the onus and burden on the Department as the facts are within the personal knowledge of the assessee.

“(iii) The CIT(A) is not justified in allowing 50% of Rs. 42,28,500/- by merely assuming that the assessee would have spent some money for completing the property without any details furnished by the assessee.

“(iv) The CIT(A) failed to appreciate the fact that it is not the issue whether assessee made expenditure of Rs. 42,28,500/- or not in completing the building but to explain the sources for investment of Rs.42,28,500/-

“(v) The CIT(A) has not passed a speaking order on the issues decided.

“(vi) Any other ground with the permission of the Court.”

6. Ground Nos. 1 and 2 relates to the sources of the unsecured loans amounting to Rs. 74.02 Lakhs. Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that assessee has not submitted bank statement copies and proved the creditworthiness which is essential condition for proving the genuineness of the unsecured loans. He pleaded that Assessing Officer has

rightly considered the unsecured loans as unexplained since genuineness and creditworthiness was not proved by the assessee beyond doubt. He therefore pleaded that the order of the Assessing Officer be upheld.

7. Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the details of unsecured loans including the names, creditworthiness and genuineness of the loans already been filed before Ld.Assessing Officer and also before Ld. CIT(A). He submitted that the Ld.Assessing Officer ignored the evidences and proceeded to add Rs.74.02 Lakhs while framing the assessment considering it as unexplained. He further submitted that confirmation letters from various parties have been submitted in the paper book.

8. We have heard both the sides and perused the material available on record. Assessee has obtained unsecured loans to the extent of Rs.74.02 Lakhs for the purchase of property amounting to Rs.212.06 lakhs, from the following persons:-

S.No.	Particulars	PAN	F.Y. 2006-07
1.	Sangam Sreelakshmi	-	3,00,000
2.	V Sampath Kumar Reddy	ADUPV3571E	2,00,000
3.	P. Subba Reddy	AHOPP4304M	16,05,000
4.	Ramana G.V. Reddy	-	44,47,328
5.	Y. Raja Mohan Reddy	AAXPY9841N	3,50,000
6.	P.B. Pavan Kumar	AMAPP4024F	3,00,000
7.	G. Narasimha Reddy	-	2,00,000
	Total		74,02,328

9. It is the contention of the Ld.AR that PAN details have been provided with respect to the parties and hence genuineness and creditworthiness of the transaction of the loans are proven beyond doubt. It was also contended by the Ld.AR that Shri V. Sampath Kumar Reddy, Shri Ramana G.V. Reddy and Shri G. Narasimha Reddy are Non-Resident Indians and the unsecured loans are taken through proper banking channels. It is also a fact that the copy of confirmation letters has been furnished in the paper book Volume-1 at Page Nos.40 to 50. On perusal of the confirmation letters and the bank statement of the assessee, we found from the paper book submissions that the assessee has submitted the confirmation letters along with PAN Card copies. However, neither the copies of bank statements of the parties nor the ITR's filed by them was produced before the Revenue Authorities or before us to prove the creditworthiness and genuineness of the unsecured loans. Ld. Assessing Officer in his order has also observed that assessee has not filed any bank statements reflecting the transactions, thereby the creditworthiness and the genuineness of the transactions was not proved. However, the Ld.CIT(A) observed that the unsecured loans have been transferred from the lenders bank account to the assessee bank account. However, the Ld CIT(A) is silent on the production of documents such as Income Tax Returns and the bank statements of the lenders who has given unsecured loans. Further the observations of the Ld. CIT(A) that the unsecured loans from Shri V. Sampath Kumar Reddy amounting to

Rs.2 lakhs was not substantiated by the assessee is also of the devoid of facts. Confirmation letter produced from Shri V. Sampath Kumar Reddy at Page No.43 of the paper book clearly mentions that cheque [No.819765 dated 13.03.2007] wherein bank statements of the assessee, submitted before us, also reflect the credit on the date of 13.03.2007. We find that the Ld. CIT(A) has erred in not properly considering the various evidences but has randomly disallowed an amount of Rs.2 lakhs without passing a speaking order with respect to the available evidences. Paragraphs (h) & (i) at Page No. 7 of the Ld.CIT(A) reads as follows: -

“(h) I have verified the details and found that the appellant had provided identity of the creditor (name/address/PAN No./ IT Details), creditworthiness (transaction by cheque / RTGs a copy of bank account) a genuineness (loans have been transmitted from lenders bank account to appellant bank account). The Assessing Officer appears to have caused no enquiry in order to ascertain/ verify the veracity of the information filed by the appellant. In the absence of any such preliminary enquiry, the Assessing Officer opined that the information is not credible and reliable is not proper. Therefore, I am not inclined to agree with the finding of the Assessing Officer. Instead, I find merit in the submissions of the learned Authorized Representative of the appellant.

(i) Be it as it may, during the appellate proceedings, the Authorized Representative of the appellant was asked to explain each creditor with the confirmation and to substantiate the loan through bank account. During the process, the Authorized Representative of the appellant had expressed that he is not in a position to substantiate the loan of Rs.2,00,000/- obtained from V.Sampath Kumar Reddy. Thus, out of the total loan of Rs.74.02 lakhs, the appellant could explain to the extent of Rs.72.02 lakhs. Therefore, the Assessing Officer is directed to add Rs. 2,00,000/- to the return of income as unexplained cash credit u/s.68 of the Act.”

10. In the instant case the Ld.CIT(A) has casually observed as stated above and we are therefore not in agreement with the findings of the Ld.CIT(A). Therefore, we are inclined to set-aside the order of the Ld. CIT(A) on this issue and allow grounds raised by the revenue. Ground Nos. 1 and 2 are allowed.

11. With respect to Ground Nos. 3 and 4, Ld. DR submitted that the Ld.CIT(A) has estimated that the assessee would have spent 50% of the improvement cost of Rs. 42,28,500/- without going through the evidences for such expenditure. He therefore submitted that an amount of Rs.21,14,250/- allowed by the Ld. CIT(A) is not in accordance with law and he pleaded to be deleted.

12. Per contra, Ld.AR relied on the order of the Ld. CIT(A). Further he also submitted that the property was sold when it was under construction which is evidenced by the Annexure-I/A attached to the Sale Deed cum GPA dated 08.08.2006. Ld.AR therefore pleaded that assessee purchased the property which was under construction and hence he has incurred an expenditure of Rs.42,28,500/- to complete the building. He therefore pleaded that cost of improvement may be allowed.

13. We have heard both the sides and perused the material available on record. On perusal of the Sale Deed cum GPA dated 08.08.2006, it is noticed from the recitals that the vendors are the absolute owners of Ground Floors + Four Floors + Pent House, upto finishing level. However, in Schedule – I/A appended to the

Sale Deed Cum GPA dated 08.08.2006 it is mentioned as "Under Construction" for determination of Age of building. Further, assessee has not produced any documentary evidences for the cost of improvement incurred by the assessee which was also observed by the Ld. CIT(A) in Paragraph No. "(e)" at Page No.12 of the order which is extracted below:

"(e) It is clear from the recitals of sale agreement and GPA that the appellant had purchased the property as an outright purchase for Rs.90 lakhs on the date of agreement i.e. 08.08.2006. The agreement does not speak of any improvement to the structure. The vendors have authorized the buyer to do certain acts in which the improvement of the project is not mentioned at all and the document does not speak about description or facilities provided to the buyers in the project. There is no mention about prospective buyers or any agreement whatsoever between the original owners and the prospective buyers. In fact, it is the buyer right to sell it to any party. There is no word about reciprocal assurance given to 3rd parties by the appellant or original owners. Therefore, the argument of the learned Authorized Representative of the appellant that the consideration mentioned in the agreement of sale & GPA is reciprocal is rejected. There is no clue regarding the construction activity by the appellant if such event is intended the sellers would have mentioned in the acts of performance as indicated in the agreement. It is not know why the GPA was silent about the construction. I have noticed that the status of property at the time of purchase is mentioned as under: -

-10- 10/1/2019

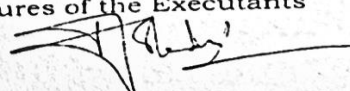
ANNEXURE-I/A

1) Description of the building	: Premises of the House bearing Municipal Nos. [New] 5-6-38 [Old No.5-6-1/A], [New] 5-6-39 [Old No. 5-6-1/B], [New] 5-6-40 [Old No.5-6-1/C], [New] 5-6-41 [Old No.5-6-1/C], [New] 5-6-42 [Old No.5-6-1/E],
a) Nature of Roof	: R.C.C.
b) Type of structure	: with pillars,
2) Age of the building	: Under Construction
3) Total extent of site	: 454.5 Sq.Yards, out of
4) Built up area particulars (Break up with floor-wise)	: 909.0Sq.Yards,
In the Ground floor	: 12000.0 Sq.Feet. Out of 24000.0 Sq.Feets.,
5) Annual Rental value	: Rs. Nil
6) Municipal taxes per Annum:	: Rs.Nil
7) Executant's Estimate of the MV of the Building	: Rs.45,00,000/-

DECLARATION

We, do hereby declare that the above facts are true and correct to the best of our knowledge and belief.

Drafted by:- Signatures of the Executants



*It is clear from the schedule (please refer asterisk *) that the property is under construction. The sale agreements depict the property as 'finished stage'. The property was purchased in August 2006 and finally sold in the year 2010. It is possible that the appellant would have spent some money for completing the property. However, no details were filed by the Authorized Representative of the appellant. On overall consideration of the facts and circumstances, felt it reasonable to allow 50% of improvement cost of Rs.42,28,500/-.*

In view of the above observations, 50% of Rs. 42,28,500/- i.e. Rs.21,14,250/- is allowed. The remaining 50% is disallowed. Accordingly, the Assessing Officer is directed to add Rs. 21,14,250/- to the return of income.”

14. The Ld.CIT(A) has erred in assuming that the assessee would have spent some money for completing the property. He further observed that no details were filed by the assessee relating to expenditure incurred for construction. In these circumstances, we find that the Ld. CIT(A) has erred in allowing 50% as cost of improvement on an estimate basis considering it as “reasonable”. The findings and observations of the Ld.CIT(A) are contradictory to the fact of the material available on record. We are therefore inclined to set-aside the order of the Ld. CIT(A) on this issue thereby allowing the grounds raised by the revenue. Ground Nos. 3 and 4 are allowed.

15. With respect to Ground Nos. 5 and 6 of grounds of appeal, we observe that these grounds are general in nature and needs no adjudication.

16. In the result, appeal of the revenue is allowed.

ITA No. 326/VIZ/2018 (A.Y. 2008-09) (Revenue Appeal)

17. This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [hereinafter in short Ld.CIT(A)] in ITA No. 462/2015-16/CIT(A)-3/VSP/2017-18 dated 31.03.2018 for the A.Y. 2008-09 arising out of the order passed under section 143(3) r.w.s. 153C of the Act.

18. Brief facts of the case are that, assessee being an individual deriving income from civil construction works and from other sources. Consequent to the search and seizure operation under section 132 of the Act conducted in the case of M/s. Sai Lakshmi Township Pvt., Ltd., Visakhapatnam on 22.08.2008 certain incriminating material relating to the assessee were found and seized. Accordingly, notices under section 153C of the Act was issued to the assessee on 29.01.2010 requiring the assessee to file the return of income for six (6) assessment years ranging from A.Y. 2003-04 to A.Y. 2008-09. In response to the notice, assessee filed a copy of return of income for the A.Y. 2008-09 filed on 22.09.2010 admitting the total income at Rs. 50,26,350/-. Subsequently, notices under section 143(2) and 142(1) of the Act along with the questionnaire were issued on 23.09.2010 and served on 27.09.2010. In response to the notices, the Authorized Representative of the assessee appeared and filed the information called for. Assessing Officer after examining the submissions made by the

assessee's representative framed the assessment by making the following additions: -

- i. Unexplained Investment in Highway Paradise Ventures amounting to Rs.391.20 Lakhs;
- ii. Income From Highway Paradise Venture to the tune of Rs.2,31,89,617/-; and
- iii. Unexplained investment in Tycoon Valley Venture amounting to Rs.2,15,80,000/-.

19. Being aggrieved by the order of the Ld. Assessing Officer, assessee filed an appeal before Ld. CIT(A). Assessee's Representative made various submissions before Ld. CIT(A), considering the submissions and explanations provided by the assessee's representative, Ld. CIT(A) partly allowed the appeal of the assessee.

20. Being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal: -

“(i) The CIT(A) erred in concluding that the assessee discharged his onus and burden in explaining sources of Unsecured loans of Rs.173.33 lakhs and Rs. 319.19 lakhs as emanated from sale of plots.

(ii) The findings of the CIT(A) made in the relevant A.Y. i.e.2008-09 are contrary to that of his own findings made in the A.Y.2007-08.

(iii) The CIT(A) erroneously placed the onus and burden on the Department as the facts are within the personal knowledge of the assessee.

(iv) The CIT(A) has not passed a speaking order on the issues decided.

(v) Any other ground with the permission of the Court.”

21. The only issue emanating from the grounds raised by the revenue is with respect of explaining sources of unsecured loans of Rs.173.33 lakhs and Rs.319.19 lakhs emanating from the sale of plots.

22. With respect to unsecured loans the Ld. DR relying on the order of the Assessing Officer stated that assessee has not proved the sources to the satisfaction of the Assessing Officer. He Further submitted that the assessee's representative filed only confirmation letters from the lenders but has not provided any bank statements, neither proved the creditworthiness and genuineness of the payments made by the lenders before Assessing Officer. Ld.DR further submitted that the Ld. CIT(A) has generally mentioned passing remark that the assessee given a PAN details of creditors, pass books, passports and copies of return of income filed etc., however, the fact is except for the confirmation letters, these details were not provided before Assessing Officer. Ld. DR further submitted that Ld.CIT(A) has not passed a speaking order after considering the submissions made by the Ld.AR. Therefore, he pleaded that the additions made by the Assessing Officer amounting to Rs. 173.33 lakhs as loans from friends and relatives shall be sustained.

23. Per contra, Ld.AR submitted that assessee has provided confirmation letters from the creditors and the payments have been made through proper

banking channels. Ld. AR further submitted that the Ld. CIT(A) has verified the sources and hence additions made by the Assessing Officer may be deleted.

24. We have heard both the sides and perused the material available on record.

The facts of the case are, assessee has purchased 14.43 Acres by investing

Rs.492.52 lakhs as stated below: -

Sl.NO.	Name	Extent in Acres	Rate Per Acre (Lakhs)	Amount in Lakhs
1.	Y. Joji Reddy	0.43	18.00	7.74
2.	Y. Joji Reddy Y. Lourdu Reddy G. Rajasekhar Reddy	4.27	31.50	134.50
3.	Y. Joji Reddy	2.92	36.00	105.12
4.	Y. Joji Reddy	4.03	36.00	145.08
5.	Y. Joji Reddy	2.78	36.00	100.08
	Total	14.43		492.52

25. Explaining the sources of funds for the investments, assessee stated as

follows: -

S.No	Particulars	PAN	2007-08
1.	Hawk Estates and Developers	AAEFH5426M	1,00,00,000
2.	Sangam Sreelakshmi	--	2,01,578
3.	Ramana G.V. Reddy	--	29,32,300
4.	Gangireddy Ramakrishna Reddy	AADHG9075N	42,00,000
5.	Sale proceeds of plots at Highway Paradise		3,19,19,000
	Total		4,92,52,878

26. The main contention of the Assessing Officer is that the assessee has not proved the sources of funds received from the creditors beyond doubt and to his satisfaction, but just providing the confirmation letters from the lenders, but neither providing any evidences to prove the creditworthiness and the genuineness of the transactions before the Assessing Officer. Further we also

found from the statements submitted before Assessing Officer, assessee has stated that he has invested Rs. 391.20 lakhs during the F.Y. 2007-08. However, before Ld.CIT(A) assessee has submitted that the investment as Rs.492.52 lakhs for purchase of 14.38 Acres. We find from the various submissions by the Ld.AR that the assessee has not stated actual facts before the Assessing Officer. Further we also find that the Ld. CIT(A) has made a passing remark that the PAN details of creditors, pass books, passports and copies of return of income filed before Assessing Officer but the Assessing Officer has not made any enquiry regarding the genuineness and credibility and reliability of the documents. The Ld.CIT(A) has not specified in his order regarding the verification of documents nor has directed the Assessing Officer to carry an enquiry calling for remand report. In these circumstances, we find that the Ld.CIT(A) has erred in deleting the addition of Rs. 173.33 lakhs being the loan from friends and relatives without passing a speaking order and therefore we are inclined to uphold the order of the Assessing Officer on this issue.

27. Similarly, with respect to the sale proceeds of plots of Highway Paradise which were used for investment. Ld. DR submitted that even though the assessee claimed receipts from sale of plots, assessee was subjected to tax audit under section 44AB of the Act but the books of accounts were never audited. Ld. DR further submitted that in the absence of audited figures the sales could not be relied upon and hence the Assessing Officer has computed the income of the

assessee by estimating the rate per sq. yard as mentioned by the assessee in his statement recorded during the survey proceedings. Therefore, he pleaded that the order of the Assessing Officer be upheld.

28. Per contra, Ld.AR submitted that the turnover from the sale of plots received by way of cheque and by way of cash amounting to Rs. 460.99 lakhs and Rs. 271.17 lakhs respectively and were offered in the Profit & Loss Account. Ld.AR further submitted that the Assessing Officer has not disputed the turnover declared by the assessee while filing the return of income. Ld.AR further submitted that the assessee received various advances for the sale of plots and the investment was made out of such cash advances received from various farmers. He therefore pleaded that the order of the Ld.CIT(A) be upheld on this issue.

29. We have heard both the sides and perused the material available on record. It is the contention of the Ld. DR that it has received advances from various farmers in the form of cash during the period February, 2007 to July, 2007. However, no such documentary evidences have been produced before us regarding the receipt of advances. Ld.CIT(A) in his order has observed as follows: -

“(e) The Authorized Representative of the appellant was asked to explain how the advances were received. He explained that the appellant had got approval for layout from the Government in February, 2007 to July, 2007. He also explained that the law permits the developer to receive advance before approval for layout. Such situation is not permissible after 2013 due to the change in law. I have perused the approval copies of Nathavalasa Venture and found merit in the submissions of the Authorized Representative of the appellant. Since

the land of 14.43 acres was purchased after the approval, it can reasonably be construed that the advances have been emanated from sale of plots. In view of the above observations, the explanation of the Authorized Representative of the appellant is found to be reasonable.”

30. We find from the observations of the Ld. CIT(A) that, the Ld. CIT(A) has erred in assuming the receipt of advances which is emanating from the sale of plots. The Ld. CIT(A) has not passed a speaking order after verification of the books of accounts and has observed that the assessee is found to be “reasonable”. Further the Ld. CIT(A) also observed that the land of 14.43 Acres was purchased after the approval for layout and hence it can be construed that the advances are emanating from the sale of plots. Ld. CIT(A) has passed his observations on premises and assumptions without examining the facts placed before him. We therefore found that the order of the Ld. CIT(A) is not in accordance with law and hence we are inclined to set-aside the order of the Ld. CIT(A) and allow the ground raised by the revenue on this issue.

31. In the result, appeal filed by the revenue is allowed.

ITA No. 327/VIZ/2018 (A.Y. 2009-10) (Revenue Appeal)

32. Coming to the appeal relating to A.Y. 2009-10, since facts in this case are mutatis mutandis, therefore the decision taken in ITA No.326/VIZ/2018 for the A.Y.2008-09 is applicable to this assessment year also. Accordingly, appeal filed by the revenue is allowed.

33. In the result, appeal of the revenue is allowed.

ITA No. 328/VIZ/2018 (A.Y. 2007-08) (Revenue Appeal)

34. This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [hereinafter in short Ld. CIT(A)] in ITA No. 77/2015-16/CIT(A)-3/VSP/2017-18 dated 31.03.2018 for the A.Y. 2007-08 arising out of the order passed under section 143(3) r.w.s. 153C of the Act.

35. Brief facts of the case are that, assessee being an individual deriving income from civil construction works and from other sources. He filed his return of income admitting an income of Rs. 5,52,750/- besides agricultural income of Rs.1,12,000/- for the A.Y. 2007-08. Consequent to the search and seizure operation under section 132 of the Income Tax Act, 1961 (in short 'Act') conducted in the case of M/s. Sai Lakshmi Town Ship Pvt Ltd., Visakhapatnam on 22.08.2008 certain incriminating material relating to the assessee were found and seized. Accordingly, notices under section 153C of the Act was issued to the assessee on 29.01.2010 and served on 14.03.2010 requiring the assessee to file the return of income for six (6) assessment years ranging from A.Y.2003-04 to A.Y.2008-09. In response to the notice, assessee filed a copy of return of income for the A.Y. 2007-08 on 03.11.2010 admitting the same taxable income. Subsequently, notices under section 143(2) and 142(1) of the Act along with the questionnaire were issued and served on the assessee. The assessee entered into

real-estate business along with Shri Y. Joji Reddy and Shri G. Rajasekhar Reddy in the year 2006. During the search and seizure operations Investigating Officer observed that assessee has made his share of investment for purchasing a land at Nathavalasa Village. Assessing Officer thereafter issued a show cause notices dated 23.11.2010 requiring the assessee to specify the share of investment and to explain the sources for the same. In response assessee submitted that he has taken unsecured loans from various parties amounting to Rs.72,16,613/- and submitted xerox copies of confirmations letters from two parties namely G. V. Ramana Reddy and Sree Lakshmi Sangam. Considering the above submissions, Ld.Assessing Officer treated an amount of Rs.69,15,000/- as unexplained investment for the A.Y.2007-08.

36. Being aggrieved by the order of the Ld. Assessing Officer, assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) after considering the submissions made by the assessee, Ld. CIT(A) deleted the additions made by the Assessing Officer by allowing the appeal of the assessee.

37. Being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal: -

- (i) *The CIT(A) erred in concluding that the assessee discharged his onus and burden in explaining sources of Unsecured loans of Rs.69.15 lakhs.*

- (ii) *The CIT(A) erroneously placed the onus and burden on the Department as the facts are within the personal knowledge of the assessee.*
- (iii) *The CIT(A) has not passed a speaking order on the issue decided.*
- (iv) *Any other ground with the permission of the Court*

38. The only issue emanating from the grounds of appeal raised by the revenue is with respect to sources of the unsecured loans amounting to Rs.69,15,000/-. Ld. DR submitted that assessee has not submitted bank statement copies and proved the creditworthiness which is essential condition for proving the genuineness of the unsecured loans. He pleaded that Assessing Officer has rightly considered the unsecured loans as unexplained since genuineness and creditworthiness was not proved by the assessee beyond doubt. He therefore pleaded that the order of the Assessing Officer be upheld.

39. Per contra, Ld.AR submitted that the details of unsecured loans including the names, creditworthiness and genuineness of the loans already been filed before Ld. Assessing Officer and also before Ld. CIT(A). He submitted that the Ld. Assessing Officer ignored the evidences and proceeded to add Rs. 69.15 Lakhs while framing the assessment considering it as unexplained. He further submitted that confirmation letters from various parties have been submitted in the paper book.

40. We have heard both the sides and perused the material available on record.

Assessee has obtained unsecured loans to the extent of Rs.72.16 Lakhs for the investment of Rs. 69.15 for his business from the following persons: -

Received From	Amount in Rs.
Shri D. Surendran	6,40,000
G.V. Ramana Reddy Rama	45,74,448
Sree Lakshmi Sangam	1,75,165
Vamsi Krishna	14,80,000
Y. Gowri	3,47,000
Total	72,16,613

41. It is the contention of the Ld.AR that, PAN details have been provided with respect to the parties and hence genuineness and the creditworthiness of the transactions of the loans are proven beyond doubt. It was also contended by the Ld.AR that the unsecured loans are taken through proper banking channels. It is also a fact that the copy of confirmation letters has been furnished in the paper book. On perusal of the confirmation letters and the bank statement of the assessee, we find from the paper book submissions that the assessee has submitted the confirmation letters along with PAN Card copies. However, neither the copies of bank statements of the parties nor the ITR's filed by them was produced before the Revenue Authorities or before us to prove the creditworthiness and genuineness of the unsecured loans. Ld. Assessing Officer in his order has also observed that assessee has not filed any bank statements reflecting the transactions, thereby the creditworthiness and the genuineness of the transactions was not proved. However, the Ld.CIT(A) observed that the unsecured loans have

been transferred from the lenders bank account to the assessee bank account. However, the Ld CIT(A) is silent on the production of documents such as Income Tax Returns and the bank statements of the assessee and the parties who has given unsecured loans. We find that the Ld. CIT(A) has erred in not properly considering the various evidences but has randomly disallowed without passing a speaking order. Paragraph No. 4.1 at Page No. 3 of the Ld CIT(A) reads as follows: -

“4.1 Unexplained investment in Highway Paradise Venture - Rs.69,15,000/-:

The Assessing Officer has made an addition of Rs.69,15,000/- on account of unsecured loans not proved. The Assessing Officer is of the opinion that the appellant has not proved the identity, creditworthiness and genuineness of the unsecured loan creditors. The Assessing Officer is also of the opinion that the transactions were not routed through bank. Therefore, the explanation of the appellant is considered as not verifiable and non-reliable. The appellant has produced the same information which was furnished before the Assessing Officer. The appellant has also furnished the explanation for the loans to the tune of Rs.72,16,613/-. I have verified the bank accounts of the appellant as well as the creditors. I have found that the loan transactions have been routed through bank accounts. Without verifying the veracity, the Assessing Officer concluded that the loans are not genuine. I am not inclined with the findings of the Assessing Officer instead I find merit in the submissions of the appellant. In view of the above, the explanation of the appellant is found to be acceptable and hence, the loans have been considered as explained. Therefore, the addition made by the Assessing Officer is deleted.”

42. In the instant case the Ld.CIT(A) has casually observed as stated above and we are therefore not in agreement with the findings of the Ld.CIT(A). Therefore, we are inclined to set-aside the order of the Ld. CIT(A) on this issue and allow grounds raised by the revenue. Grounds raised by the revenue are allowed.

43. In the result, appeal of the revenue is allowed.

CROSS OBJECTIONS: -

CO Nos. 59, 60 & 61/VIZ/2019

44. The assessee has filed the cross objections for various assessment years contesting the enhancement made by the Ld. CIT(A). The cross objections are filed on 18.04.2019. The Ld. CIT(A) passed the orders on 31.03.2018, and the Revenue filed the appeals on 18.06.2018, since the date of communication to the department was on 20.04.2018. Therefore, the assessee ought to have filed within the limitation period of 30 days (on or before 18.07.2018) with respect to filing of cross objections and 60 days (on or before 30.05.2018) with respect to filing of cross appeal / appeal. But assessee has filed the cross objection on 18.04.2019, therefore, there is a huge delay of 273 days (approximately).

45. Ld.AR submitted that after receipt of grounds of appeal filed by the Revenue the assessee filed cross objections within two days and hence there is no delay in filing the cross objection. Further, Ld.AR also submitted that assessee has not filed any appeal against the order of the Ld. CIT(A) and the assessee has raised only cross objections which should be considered as an appeal by the assessee. On this issue, he relied on the following case laws:

- i. *CIT v. PurbanchalParibabanGosthi (1998) 234 ITR 663.*
- ii. *Decision of the Co-ordinate Bench of Delhi in the case of ITO v. Staunch Marketing Pvt. Ltd in ITA No. 1643/Del/2008 dated 12.05.2015.*
- iii. *DCIT v. Total Oil India Pvt., Ltd in ITA No. 6977/MUM/2019 dated 23.06.2021.*

46. In this connection, Ld.AR submitted that assessee has also filed an affidavit dated 26.07.2024 stating the above facts.


47. Per contra, Ld. DR submitted that the assessee preferred to file the cross objections against the order of the Ld. CIT(A) after receiving intimation of the appeal filed by the revenue. Ld. DR further submitted that the assessee is not actually interested in pursuing the appeal before the Tribunal. However, as an afterthought the assessee preferred to file the cross objections after the revenue filed the appeal before the Tribunal. Further, Ld. DR submitted that the assessee is aware of the revenue appeal and has filed cross objection with a huge delay of almost 273 days. He therefore pleaded that the cross objection is not maintainable and shall be dismissed.

48. We have heard both the sides and perused the material available on record. It is found from the records that the assessee opted to file cross objections belatedly on 18.04.2019 therefore there is a delay of 273 days (approximately). But the contention of the assessee is that there is no delay and within two days after the notice of the revenue appeal he has filed the cross objections.

49. The main contention of the Ld.AR is that he became aware of appeal filed by the Revenue only on 16.04.2019. However, on perusal of the material on record, we noticed that the Ld.AR has filed two letters for adjournment for the

hearing of cases posted on 21.01.2019 and 20.03.2019. Copy of the same is extracted below:

28 70-31
21/1/19

 Samuel Nagadesi
M.Com, LL.B, LL.M, PGD in ADR, FCA

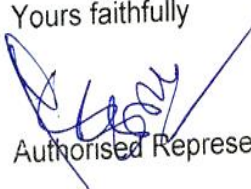
Samuel Nagadesi & Associates
CHARTERED ACCOUNTANTS

Subject: Appeal No. ITA/325,326,327/VIZ/2018 in the name of
Mr.Y.Joji Reddy. E 328/V/18.

The above mentioned case has been fixed for hearing on 21.01.2019, In this regard, it is submitted that the undersigned, the Authorized Representative is proceeding to Surat on urgent work and could not be in a position to appear before the Honorable Bench, therefore makes this humble prayer to grant adjournment and refix the case at any date as convenient to this Honorable Bench.

The inconvenience caused in this regard is deeply regretted.

Thanking you
Yours faithfully


Authorised Representative

Samuel Nagadesi

M.Com, LL.B, LL.M, PGD in ADR, FCA

Samuel Nagadesi & Associates
CHARTERED ACCOUNTANTS

INCOME-TAX APPELLATE
TRIBUNAL, VISAKHAPATNAM

No./Dt. of Receipt 551

Initial of Clerk 15/3/19

Subject:

Adjudgment Petition before The Income Tax Appellate Tribunal,
Visakhapatnam Bench, Visakhapatnam.

Appeal Nos. ITA/325/Viz/2018 in the name of M/s. Y.Jojireddy for
the Assessment Year 2007-08, 2008-09 & 2009-10. ~~ITA/326/327/VIZ/2018~~

The above mentioned case has been fixed for hearing on 20th March 2019. I have to attend Conference of SIRC of ICAI held at Tirupati from 20th March 2019 to 23rd March 2019. I request the Honorable Bench to grant an adjournment of the hearing to 04th April 2019.

Thanking you
Yours faithfully

Samuel Nagadesi
Chartered Accountant

50. From the filing of the letters of adjournment by the assessee, it is obvious that the Ld.AR is having knowledge of the Revenue appeals on 21.01.2019 being the date of first adjournment filed by the Ld.AR. It is nothing but an afterthought of the assessee, who sought the appeal papers on 16.04.2019, for filing the cross objection in order to circumvent delay in filing the cross objections. Therefore, the contention of the Ld.AR that they are aware of the appeal proceedings only on 16.04.2019 is factually incorrect and could not be accepted. Further, we are also of the opinion that assessee ought to have filed an appeal before the Tribunal in respect of the grievance arising out of the order of the Ld. CIT(A).

There is merit in the argument of the Ld.DR that the assessee as an afterthought preferred to file the cross objection by manipulating the records in order to overcome the limitation period of 30 days (on or before 18.07.2018) with respect to filing of cross objections and 60 days (on or before 30.05.2018) with respect to filing of appeal. Further, we also find that assessee has also filed a false affidavit on 26.07.2024 stating that he became aware of the revenue appeal on 16.04.2019 only and the Ld.AR has stated false statements and has falsely misled the Bench. We hereby caution the Ld. AR for mis-representing the facts by providing false affidavit before the Bench. We find no merit in the argument of the Ld.AR that there is no delay in filing of the cross objections. Therefore, we are of the considered view that the cross objections raised by the assessee are not maintainable and hence dismissed in limine.

51. In the result, cross objections raised by the assessee are dismissed.

52. To sum-up, appeals filed by the revenue are allowed and the cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 09th September,2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :. 09.09.2024

Giridhar, Sr.PS

Sd/-

(एस. बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee :
 - 1) **Y. Joji Reddi**
Flat No. 401, Vasanth Vihar
Sunder Nagar Colony
S.R. Nagar, Hyderabad
 - 2) **Y. Lourdu Reddy**
7-2-1793, Indigos County
Flat No. 314, Czech Colony
Sanath Nagar, Hyderabad
 - 3) **Joji Reddy Yeruva**
C/o D.M. Rao & Co.,
Chartered Accountants, 305, GVK Plaza
Seethammampeta, Visakhapatnam – 530016
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. Commissioner of Income-Tax
Central Circle – 1**
Pratyakshakar Bhavan
Sector-8, MVP Double Road
Visakhapatnam, Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam